IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 674 of 1995
with
CIVIL APPLICATION NO 1827 of 1995
in
SPECIAL CIVIL APPLICATION NO 8078 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VG PATIL

Versus

STATE OF GUJARAT

Appearance:
1. LETTERS PATENT APPEAL No. 674 of 1995
MR PM THAKKAR for Appellant No.
MR PR ABICHANDANI, AGP, for Respondent No. 1-5

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 21/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. The Appellant - original petitioner was serving as Police Sub-Inspector (for short "PSI"), Bharuch (Rural). In 1983 when he was on duty as PSI it was alleged that on 14.5.1983 a complaint was lodged at Nabipur Police Station for the offences u/s.406, 420 read with 114 I.P.Code against certain persons and the appellant was assigned the investigation of the said complaint. It was alleged that on 15.5.1983 at about 11.00 pm in the night the petitioner had gone to the Pulse Mill run by one Sumer Ibrahim A. Patel of Nabipur in connection with the investigation of the said offence and interrogated some labourers of the Mill and brought them to the Police Station. On interrogation it was found by him that the owner of the Pulse Mill had gone to Bombay. The allegation against the appellant - petitioner was that he beat the labourers and also illegally demanded Rs.1 lac from the father-in-law of Sumer Ibrahim Patel and got Rs.95,000/-. Thereupon, a complaint was filed by Sumer Ibrahim Patel, the owner of Pulse Mill against the petitioner for demanding money and beating the labourers. Looking to the seriousness of the complaint the appellant was placed under suspension pending inquiry on 3.10.1983. Later on the charge sheet dated 3.4.1984 was served upon him. At the end of regular Departmental Inquiry the Inquiry Officer gave benefit of doubt and exonerated the appellant from all the charges on 23.10.1984 and on 29.10.1984 he was reinstated in service by D.S.P., Bharuch, on the post of PSI (Leave Reserved) at Bharuch and his period of suspension was treated as on duty. It had come to the notice of DIG - respondent No.5, thereupon, in exercise of his suo-motu jurisdiction u/s. 27(A) of the Bombay Police act (for short "the Act") issued show cause notice dated 28.3.1988 to the petitioner to show cause as to why he should not be dismissed from service as, the D.I.G. was of the opinion that the Inquiry Officer wrongly exonerated the appellant. Later on the Commissioner of Police, Vadodara City by his order dated 29.6.1988 terminated the services of the appellant - petitioner by setting aside the order of reinstatement dated 23.10.1984, passed by the Disciplinary Authority exonerating the petitioner from the charges levelled against him. The said order passed by the Police Commissioner terminating the appellant petitioner from service was challenged by the petitioner before this Court by way of Special Civil Application No.8078 of 1988, which was partly allowed by the learned Single Judge of this Court (V.H.Bhairavia, J., as he then was) and the order of termination of the appellant petitioner,

passed by the Commissioner of Police, was quashed and set aside on the technical ground, as observed by His Lordship in his Judgment. However, the learned Single Judge was conscious that he had to allow the writ petition of the appellant - petitioner on technical ground, but looking to the seriousness of charges levelled against him the learned Single Judge was of the opinion that he should not be given any back wages and accordingly the petition was allowed and the petitioner was reinstated in service with all other consequential benefit, except the back wages for a period of few years. This has been challenged by the appellant petitioner in this LPA.

2, Learned Counsel Mrs.Pahva for the appellant - petitioner vehemently submitted that the learned Single Judge ought to have awarded full backwages to the appellant - petitioner when he had allowed the writ petition of the appellant - petitioner. Ordinarily, when the petition is allowed and the order of termination is quashed and set aside the back wages follows, but it is not always necessary to award full back wages. On facts of the case if the learned Single Judge was of the opinion that the appellant - petitioner should not be given back wages and if he had exercised his discretion under Article 226 of the Constitution against the petitioner then such an order cannot be interfered by this Court in LPA.

3. In view of the above discussion, this Appeal fails and is hereby dismissed.

Civil Application No.1827 of 1995 would not survive as the main Appeal is dismissed. Hence, it is dismissed.

(B.J.Shethna, J.)
Date : July 21, 2004
(M. C. Patel, J.)
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